

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT
SRINAGAR**

Reserved on: 29.04.2026

Pronounced on:15.05.2026

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Whether the operative part
or full judgment is
pronounced: **Full**

RSA No.2/2024

ABDUL SAMAD BHAT & ORS **...PETITIONER(S)/APPELLANT**

**Through: - Mr. Sheikh Hilal, Advocate,
Ms. Shazia Kamal, Advocate**

Vs.

MST. RAHTI & ORS. ...RESPONDENT(S)

Through: - Mr. J. H. Reshi, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The appellants/plaintiffs have, by virtue of the present Civil 2nd Appeal, challenged the judgment and decree dated 05.06.2012 passed by the learned Sub Judge, Budgam, as upheld by the learned Additional District Judge, Budgam, in terms of judgment and decree dated 12.06.2023 in a suit filed by the appellants/plaintiffs against the respondents/defendants.

2) It seems that the appellants/plaintiffs filed a suit against the predecessor-in-interest of the respondents/defendants before the Court of learned Sub Judge, Budgam

(hereinafter “the trial court”) seeking a decree for setting aside the exparte decree dated 13.06.2001 passed by the said Court against the appellants/plaintiffs.

3) According to the plaintiffs, plaintiff No.1 is the owner of land measuring 5 kanals under Survey No.761 situated at Village Naroo Tehsil and District Budgam and the said land is in permissive possession of the defendants for the last more than ten years. It was pleaded that the defendants in connivance with revenue agencies managed mutations in terms of Section 4 and 8 of the J&K Agrarian Reforms Act in their favour in respect of the said land. The said mutation orders were challenged by plaintiff No.1 before the Joint Agrarian Reforms Commissioner, Budgam, by way of an appeal but the same was dismissed, whereafter plaintiff No.1 filed a revision petition before the J&K Special Tribunal at Srinagar. The order of the Joint Agrarian Reforms Commissioner, Budgam, was set aside and the matter was remanded to Joint Agrarian Reforms Commissioner, Budgam. It was further pleaded that the defendants had filed a suit against the plaintiffs before the Court of learned Sub Judge, Budgam, titled ‘Ghulam Rasool Kuchay and another vs. Samad Bhat and others’ in which they obtained a decree in exparte against the plaintiffs.

4) The plaintiffs challenged the impugned judgment and decree dated 13.06.2001 passed by the learned Sub Judge, Budgam, on the grounds that no summons was ever served upon them. It was contended that signatures of plaintiffs Samad Bhat and Rashid Bhat are not appearing on the said summons and that the signatures appearing on the summons pertain to some other persons. According to the plaintiffs, the exparte judgment and decree dated 13.06.2001 is a product of fraud perpetrated by the defendants upon the court. It was further contended that the defendants herein, on the basis of false evidence, projected themselves to be the owners in possession of land in question and, therefore, they have perpetrated fraud upon the court.

5) The suit was contested by the defendants by filing their written statement wherein it was pleaded that the suit land is in their peaceful possession for the last more than 35 years and that the same has devolved upon them in terms of Section 4 and 8 of the Agrarian Reforms Act. According to the defendants they have been cultivating the suit land since Kharif 1971 and even prior to that as tenants, as a consequence whereof, ownership rights in respect of the said land have been vested upon them in terms of Section 4 and 8 of the Agrarian Reforms Act. It has

been contended that after the remand of case to the Joint Agrarian Reforms Commissioner, Budgam, the appeal of the plaintiffs has again been dismissed and the mutations under Section 4 and 8 of the Agrarian Reforms Act in favour of the defendants have been upheld.

6) Regarding the civil suit filed by the defendants against the plaintiffs before the Court of Sub Judge, Budgam, it has been submitted that the plaintiffs herein were duly summoned and served but they did not choose to pursue their case. It has been further submitted that the plaintiffs herein appeared before the court through their counsel but later on stopped appearing, as a consequence whereof, exparte proceedings were initiated against them. According to the defendants, they led exparte evidence in the suit and a declaratory and injunctive decree came to be passed in their favour by the learned Sub Judge, Budgam.

7) The defendants further pleaded that after the passing of exparte judgment and decree against the plaintiffs herein, they made an application before the Sub Judge, Budgam, for setting aside of the exparte decree, which was dismissed by the learned Sub Judge, Budgam, vide order dated 23.11.2002. This fact has been suppressed by the plaintiffs herein in their suit. It was contended that the plaintiffs cannot claim any fraud in these circumstances.

8) Besides the aforesaid factual pleadings, the defendants contended that the suit is not maintainable as the same is hit by the provisions of Agrarian Reforms Act and that the civil court has no jurisdiction to try the suit. It was also contended that the plaintiffs are precluded from filing the suit as their application under Order 9 Rule 13 of CPC has been dismissed and that they have no cause of action.

9) Vide its order dated 22.06.2004, the learned trial court, on the basis of the pleadings of the parties, framed the following issues:

1. *Whether the plaintiffs have not properly valued the suit and requisite court fee has not been paid, if so, what is the proper valuation of the suit and what is the requisite court fee? (OPD)*
2. *Whether the suit is barred under the Provisions of Agrarian reforms Act? (OPD)*
3. *Whether the suit of the plaintiffs is hit by Order 9 CPC and has plaintiff is precluded to file the instant suit?*
4. *Whether the suit of the plaintiff is hit by Section 11 of the CPC? (OPD)*
5. *Whether the plaintiffs' suit is time barred? (O.P.D)*
6. *Relief. (OP parties)*

10) On 09.02.2012, the learned trial court framed the following additional issues:

7. *Whether the plaintiff No.1 is owner of land mentioned in Para No. 1 of the plaint? (OPP)*
8. *Whether the defendants have fraudulently obtained decree in ex-parte dated 13 05-2001 in case titled Gh. Rasool Kuchay and anr. V/s Samad Bhat & Ors*

*on the grounds mentioned in Para No.3 of the plaint?
(OPP)*

11) After framing of issues on 22.06.2004, the plaintiffs were asked to lead evidence in the first instance. It seems that the plaintiffs, instead of leading any oral evidence, made an application in terms of Section 73 of the Evidence Act, with a prayer that signatures appearing on the summons issued in the suit in which the exparte decree was passed against them be sent to the FSL expert for examination. The said application came to be dismissed by the trial court in terms of order dated 10.02.2007. Thereafter on 09.02.2012, two additional issues came to be framed by the trial court, which have been reproduced hereinbefore. After framing of the two additional issues, the parties chose not to lead any evidence in support of their respective cases. It is pertinent to mention here that prior to framing of additional issues on 09.02.2012, even though the plaintiffs did not choose to lead any oral evidence, defendant Abdul Qayoom examined himself as a witness.

12) The learned trial court, after analyzing the material on record, decided issues No.7 and 8 against the plaintiffs whereas issues No.1 to 5 were decided against the defendants. On the basis of the findings on Issues No. 7 and

8, the learned trial court dismissed the suit of the plaintiffs in terms of the impugned judgement dated 05.06.2012.

13) The plaintiffs assailed the judgment and decree passed by the learned trial court by way of an appeal before the court of learned Additional District Judge, Budgam (hereinafter '1st appellate court') on the grounds that they were not obliged to prove their title before the trial court as the only issue to be determined by the trial court was whether the decree under challenge was obtained by the defendants by playing fraud upon the court. It was further contended that the plaintiffs had no knowledge about the framing of additional issues on 09.02.2012 and, therefore, there was no question of leading any evidence on their behalf. It was also contended that the learned trial court has not taken note of the written arguments submitted by the plaintiffs and that additional issues were not required to be framed by the learned trial court as the same were not necessary for the disposal of the suit.

14) A fresh ground was urged by the plaintiffs at the first appellate stage by contending that in respect of the suit land, a compromise decree was passed by the learned Munsiff, Budgam, in the year 1976, in which mother of the defendants was a party and by virtue of the said

compromise decree dated 06.04.1976, the plaintiffs were declared to be the owners of the suit land but this fact has been suppressed by the defendants while obtaining the exparte judgment and decree dated 13.06.2001, which was under challenge before the trial court. It was contended that the defendants have played a fraud upon the court while obtaining the aforesaid judgment and decree.

15) The learned 1st appellate court vide the impugned judgment and decree dated 12.06.2023 declined to interfere in the judgment of the trial court and dismissed the appeal of the plaintiffs.

16) The appellants/plaintiffs have challenged the impugned judgment and decree passed by the trial court, as upheld by the 1st appellate court, on the grounds that the appeal raises substantial questions of law for determination of this Court. It has been contended that non-disclosure of compromise decree dated 06.04.1976 on the same subject matter which was the subject matter of the impugned exparte judgment and decree dated 13.06.2001, constitutes a fraud which can be pleaded by the appellants/plaintiffs at any stage of the proceedings. It has been contended that once it is shown that the respondents/defendants suppressed material facts before the court of learned Sub Judge, Budgam, while obtaining

exparte judgment and decree dated 13.06.2001, the said judgment and decree becomes unsustainable in law and this aspect of the matter can be considered at any stage of the proceedings. It has been further contended that the plaintiffs were never served of the summons in the suit in which the exparte judgment and decree dated 13.06.2001 came to be passed but this aspect of the matter has not been properly appreciated either by the trial court or by the 1st appellate court. It has also been contended that the judgments passed by the learned courts below are based upon assumptions and irrelevant material.

17) I have heard learned counsel for the parties and perused the record of the trial court as also the record of 1st appellate court, the impugned judgments passed by both the courts below, the memo of appeal and the questions of law projected in the memo of appeal.

18) Before proceeding to deal with the contentions raised by the appellants/plaintiffs, it would be necessary to understand the legal position governing the admission of a civil second appeal.

19) Section 100 of the Code of Civil Procedure provides for a second appeal to the High Court from an appellate decree. There is no vested right upon a litigant to file an appeal

against a judgment unless the statute provides so. If a statute provides for a condition precedent to be satisfied before a court can exercise its appellate jurisdiction, the court is under an obligation to satisfy itself whether the condition precedent is fulfilled. Section 100 of the CPC clearly provides that the High Court has power to entertain an appeal from a decree passed in an appeal by a court subordinate to the High Court if it is satisfied that a substantial question of law is involved in the case. Thus, unless a substantial question of law arises in a case for determination, the High Court would not be justified in entertaining a second appeal.

20) The Supreme Court has, in the case of **Sir Chunilal V. Mehta & Sons Ltd. vs. Century Spinning & Manufacturing Co. Ltd.** AIR 1962 SC 1314, laid down the test to determine whether a question is a substantial question of law or not. It has been held that proper test for determining whether a question of law raised in the case is substantial, would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by the Supreme Court or by the Privy Council or by the federal court or is not free from difficulty or calls for discussion of

alternative views. The Supreme Court further held that if the question is settled by the highest court or the general principles to be applied in determining the question are well settled that there is a mere question of applying those principles or that the plea raised is probably absurd, the question would not be a substantial question of law.

21) The aforesaid legal principles have been consistently reiterated and reaffirmed by the Supreme Court in its subsequent judgments including the judgment delivered in the case of **Chandrabhan (Deceased) through LRs & Ors. vs. Saraswati & Ors.** (2022) 20 SCC 199.

22) The substantial questions of law have to be expressly and specifically formulated by the High Court and in case no substantial question of law arises for determination by the High Court, the civil second appeal against the judgement and decree passed by the court below cannot be admitted.

23) Learned counsel, appearing for the appellants, has laid much emphasis on formulation of following two questions of law:

- (I) That service of summons in the suit in which exparte judgment and decree dated 13.06.2001 came to be passed against the appellants/ plaintiffs was not proper, inasmuch as the summons available on record would show that it does not bear the date on which it has been issued;

- (II) That it was not open to the 1st appellate court to brush aside the contention of the plaintiffs that the defendants while obtaining exparte judgment and decree dated 13.06.2001 had suppressed the material fact relating to compromise decree dated 06.04.1976;

24) So far as the first question sought to be raised by learned counsel for the appellant is concerned, if we have a look at the record of the suit, in which exparte judgment and decree came to be passed, it is revealed that even though the date of issuance of summons is not mentioned but it is clearly mentioned in the summons that the next date fixed in the case is '13.07.2000' and it also bears signatures of the defendants in the said suit, though the plaintiffs herein have contended that these signatures do not pertain to them and that the same pertain to some other person(s). However, the plaintiffs have not entered the witness box before the trial court to make a statement on oath to this effect. Thus, their assertion that these signatures do not pertain to them has remained unsubstantiated.

25) There is yet another aspect of the matter which is required to be noticed. The plaintiffs, who were defendants in the suit in which the exparte judgment and decree dated 13.06.2001 came to be passed, have entered appearance through their counsel whereafter they have stopped appearing in the case. Not only this, after passing of the

impugned exparte judgment and decree, the plaintiffs made an application before the trial court for setting aside of the said judgment and decree. The said application was made on 20.06.2001, wherein the only ground that was urged by the plaintiffs herein was that they were under the impression that the suit would be withdrawn by the respondents (plaintiffs therein), as such, they could not contact their counsel nor could they attend the court. It was further pleaded by the appellants/plaintiffs in the said application that fraud has been committed upon them by issuing the exparte decree and that they have already filed an appeal before the Agrarian Reforms Commissioner. No other ground was urged by the appellants/plaintiffs before the Court while making the application for setting aside of exparte judgment and decree dated 13.06.2001.

26) The Court vide its order dated 23.11.2002, dismissed the aforesaid application by observing that the same is very cryptic in nature and no reasonable ground has been made out to set aside the exparte judgment and decree. The plaintiffs/appellants did not plead before the court of learned Sub Judge, Budgam, that they were not served or that the signatures appearing on the summons do not pertain to them or that they were not knowing about

pendency of the suit filed by the respondents herein against them.

27) In the aforesaid circumstances, the stand of the plaintiffs before the trial court that summons was not served upon them and that fraud had been played upon them by the defendants while obtaining the exparte judgment and decree dated 13.06.2001, has been rightly rejected by the learned trial court. No question of law, much less a substantial question of law in this regard arises for determination of this Court.

28) In the context of second question sought to be raised by learned counsel for the appellants, it is to be noted that the appellants/plaintiffs did not make a mention about the compromise decree dated 06.04.1976, either at the time of making application for setting aside of the exparte judgment and decree dated 13.06.2001 or at the time of challenging the said exparte judgment and decree by way of a separate suit, out of which the present appeal arises. It is for the first time at the 1st appellate stage that the appellants/plaintiffs disclosed before the 1st appellate court that a compromise decree had been passed in respect of the subject matter of the suit way back in the year 1976, in which mother of the respondents/defendants was a party.

29) Learned counsel for the appellants has placed heavy reliance upon the judgment of the Supreme Court in the case of **Yashoda (Alias Sodhan) v. Sukhwinder Singh and others** (2022) 17 SCC 307, to contend that a judgment, decree or order obtained by playing fraud on court is a nullity and such a judgement or order has to be treated so by every court, whether it is first court or the final court.

30) There can be no quarrel with the legal proposition that a judgment or decree obtained by fraud is a nullity in the eyes of law but in the context of present case, if we have a look at the material on record, it becomes clear that compromise decree dated 06.04.1976 was not brought to the notice of the court by the plaintiffs/appellants in the proceedings in which exparte judgment and decree dated 13.06.2001 came to be passed wherein the plaintiffs participated, at least at the time of filing an application for setting aside of the said exparte judgment and decree. They did not do so at the time when they filed the suit before the trial court challenging the exparte judgment and decree dated 13.06.2001 and it is only at the first appellate stage that the plaintiffs raised the said plea.

31) It is to be borne in mind that the defendants were not party to the said compromise. It was their mother who was a party to said compromise which had been passed, way

back in the year 1976. At that time, the defendants would have been very young in age. It is an admitted position that the appellants/plaintiffs at no stage had taken over possession of the suit land pursuant to compromise decree dated 06.04.1976. From this, it can be presumed that the said compromise decree was not acted upon by the parties nor its execution was sought through the court. In these circumstances there was no occasion for the respondents/defendants to gain knowledge about the said decree. Thus, it cannot be inferred that the respondents/defendants despite having knowledge of the said compromise decree suppressed the said fact from the court. It was incumbent upon the appellants/plaintiffs, who were party to the said compromise decree, to bring it to the notice of the court at the time of filing of application under Order 9 Rule 13 of the CPC or at the time of filing of the suit, which they failed to do.

32) In **Yashoda's** case (supra), the defendants had specifically contended in their written statement before trial court itself that second suit filed by the plaintiffs therein was not maintainable in view of withdrawal of the first suit and this aspect of the matter had been suppressed by the plaintiffs while filing the suit. It was in these circumstances that the Supreme Court held that this aspect of the matter

can be looked into by the Court even at the final stage when the matter is brought to the notice of the Supreme Court. In the present case, the situation is different, inasmuch as the plaintiffs themselves are to be blamed for not bringing the fact relating to passing of the compromise decree to the notice of court at various stages of litigation until the filing of first appeal. Therefore, the contention of the appellants is liable to be rejected.

33) Even the plaintiffs are guilty of suppression of material facts. They did not disclose in the plaint filed before the trial court that their application under Order 9 Rule 13 CPC had been dismissed. It is a fundamental legal maxim that “He who seeks equity must do equity”. Once it is shown that the plaintiffs are themselves guilty of suppression of material facts, they cannot expect the defendants to come clean on facts.

34) There is yet another aspect of the matter which is required to be noticed. It is an admitted case of the plaintiffs that the suit land has been in possession of the defendants/respondents for the last so many decades. Despite this, the plaintiffs, while challenging the exparte judgment and decree dated 13.06.2001 before the trial court, have not sought the relief of possession. Proviso to Section 34 of the Specific Relief Act, which is in *pari-materia*

with Section 42 of the J&K Specific Relief Act, clearly stipulates that court shall not make any declaration relating to status or a right as to any property in a suit instituted against any person denying such right if the plaintiff being able to seek further relief than a mere declaration of title, omits to do so. In the present case, the plaintiffs have filed the suit before the trial court seeking a declaration relating to exparte judgment and decree dated 13.06.2001, which pertains to the said property, without claiming the relief of possession in respect of the said property, which, admittedly, is in possession of the defendants/respondents. On this ground also the suit of the plaintiffs is not maintainable.

35) For the foregoing discussion, I do not find it a case where any question of law, much less a substantial question of law, arises for determination of this Court. The impugned judgment passed by the learned trial court, as upheld by the 1st appellate court, does not call for any interference from this Court. The appeal lacks merit and is dismissed accordingly.

(Sanjay Dhar)
Judge

SRINAGAR

15.05.2026

“Bhat Altaf-Secretary”

Whether the **judgment** is reportable: **YES/NO**

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